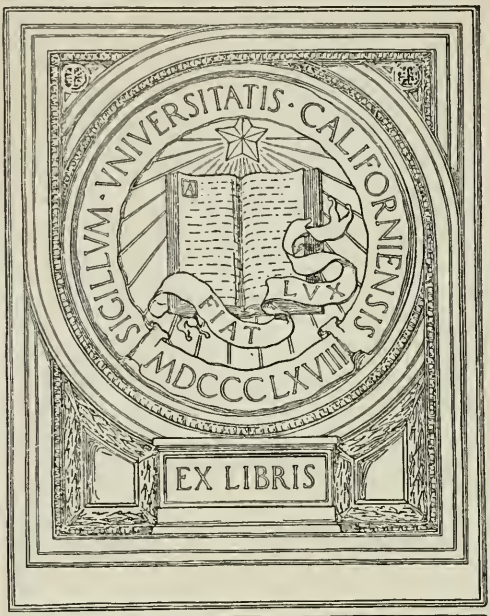
Argument ... in Support of his Resolution for Day Labor

By
John Luttrell Murphy



ARGUMENT

OF

JOHN LUTTRELL MURPHY

BEFORE THE

NEW CITY HALL COMMISSION

Delivered on the 5th and 6th of September, 1880,

IN SUPPORT OF HIS RESOLUTION FOR

DAY LABOR

ON THE NEW CITY HALL,

SAN FRANCISCO.

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DAY LABOR

On the New City Hall, San Francisco.

To the Honorable Board of New City Hall Commissioners for the City and County of San Francisco:

GENTLEMEN: In behalf of the resolution introduced by me in your honorable body on the day of August, 1880, providing for letting the ordinary mechanical and other work upon the New City Hall *out to the people at large, by the day*, instead of letting it out to a few of the people only, in bulk, I have to say:

The *proposition* is not intended to work any very great or radical change in the general plan or manner of building the New City Hall, but only in a conservative spirit to *enlarge* and *improve* one branch of that service, which has from the start been, to a more or less extent, recognized and followed by those in charge of the work.

The proposition is not to *do away* with the contract system entirely—nor in fact at all—but only to *change* the *mode* of contracting in one of its features only—that in relation to *labor*—and only as to a certain *kind* of labor at that.

The *great bulk* and by far the *heaviest portion* of the business of constructing the New City Hall is left undisturbed, to be carried on as heretofore under the old system, such as the enormous and complicated *iron work*, *mill work*, foundry

work, machinery work, and *such other work* as requires the employment of machinery, and the *furnishing* of the vast *supplies* of materials of all kinds used in its construction.

The proposition contemplates the *contracting directly* with the mechanics and laborers themselves, who perform the work, instead of *indirectly*, and in a round about way through the medium of *middle men*, called *contractors*, who stand *between* the employer and the employed—*between* the *authorities* who have to have the work done and those who have to do it—*midway* of those who are under the necessity of *buying*, and those who are under the necessity of *selling*—a class of men who make it a business of taking advantage of the necessities of both *buyer* and *seller*.

The proposition only goes to the extent of purchasing such mechanical and other labor as can be *done by hand*, straight from the *producers* of that labor themselves, and not from those who are not only *non-producers* of labor themselves, but simply *speculate* and *trade* upon the labor produced by others.

The proposition means to divide and distribute the *profits* of labor equitably among those who actually *earn* those profits by that labor, and not merely between those who make a business in the first place of *selling labor short* to those who are forced to buy, and then turning around and buying in the *profits* of that labor *long* from those who are compelled to sell.

The proposition is, as far as practicable, to save labor from the dangers and consequences of *jobbery* and *gambling*, and to lift it above the petty schemes and wily machinations of those whose only interest in the labor of the country is *how to subjugate it* and *turn it to their own selfish ends*, and who make a *pastime* of *weaving nets* and *setting traps* for the purpose of *ensnaring* it and *enslaving* it.

The proposition is, as far as possible, to *emancipate* labor from the slavery of *monopoly*, and lift it out of a state of *subjection* and *dependence* to which it has been reduced by *corporate greed* and *selfish ambition*, and restore it to a position of *freedom*, and breathe into it a *new life* of *self-reliance* and *independence*.

The proposition goes to giving to labor its *own reward;* to letting it share in its *own profits;* to guarantee it *living returns;* to make it *self-sustaining;* and above all to secure to it the elements of *prosperity* and *contentment*.

And the real question under the old system—which has so long obtained in public as well as private enterprises, because it has been studiously and ingeniously *forced* upon the

people, and unthinkingly and unwittingly *acquiesced* in by them—has, in my opinion, not been so much a question of "*How to do it,*" as of "*How not to do it.*"

It is often and truly said, "where there is a will there is a way," and I believe, without intention to reflect upon any one, if there had been more of a disposition on the part of those heretofore in authority to find out "*How to do it,*" rather than "*How not to do it,*" the *way* would have been made reasonably plain and open to them, and their *course* would without doubt have been fully *appreciated* by the public and *sustained* by those in power.

Now let us not *beg* the question at the very start, and before we have heard the *other* side. Let us not *give it up,* before we have at least investigated *both* sides. Let us not turn a deaf ear to it, before we have earnestly and impartially endeavored to ascertain whether it is correct or not. Let us rather meet it like men, seeking to do *right.* Let us look into it for *ourselves,* and not trust entirely to others, whose selfish motives may lead them to conclusions *against* honest conviction.

We are to *interpret* the law as *we* find it for *ourselves,* and to be governed *by* that interpretation, until a higher power is constitutionally called upon to *enterpret it for us.* We cannot show that responsibility, for we are neither *bound* nor *shielded* by the interpretation of our *predecessors even,* nor by *their* practice thereunder.

In pursuing this investigation, the *first obstacle* we run across is that put forth by those whose purposes are best subserved by holding a contrary view in favor of the old system under *Section* 14, of the "New City Hall" Act, so called, approved March 20, 1876, which provides, that "*where work* is to be *done* upon said building, or *materials* to be *furnished,* it shall be the duty of the Board of Commissioners to advertise * * * * for sealed proposals for doing said work or furnishing said material," etc.

Now, this language, in my opinion, is *directory* to, and not mandatory upon this Commission; and I am satisfied that a careful examination into the whole *scope* and *tenor* of the Act, with a due respect for and consideration of *all its separate parts,* and an intention to construe all of its distinct portions with *reference to each other,* so as to give, as far as possible, full *force* and *effect* to the whole, will lead to and warrant *this construction.*

In fact, I believe it will be found that *no other* construction is consistent, or will stand the test.

Then if *directory* merely, it may be followed strictly or

not, as the Commissioners may, in the exercise of their discretion, determine is *wisest* and *best* for the interests of the city and people. If it may be *deviated* from, and not followed *strictly* in any *one* particular, it may in *more*.

If *any* work whatever can be done upon the New City Hall outside of the old system, *more* can be done in like manner. If *one* man can be employed by the *day*, *more* can be likewise employed.

But, as I have said before, it is not the intendment of the resolution to take the *whole matter* of work and supplies out of the old system. It is only intended to *change* the *mode* of doing a certain portion of the *work;* and as there are no restrictions upon or discrimination in the "*work to be done*," if *one* kind of work can be let out by the *day*, *more* kinds can be also.

If one man *so employed* can be *paid* for his *own* labor, *more* can be paid in the same way; and who will pretend that it was ever intended, or that it is practicable if it was, that the *entire work* of building and completing the New City Hall could be conveniently or successfully carried on without employing some *extra* men from time to time, as necessity requires, by the *month*, *week*, or *day?*

How absurd and unjustifiable it would be on the part of this Commission to attempt to go through the tedious and expensive formality and method of procuring *plans* and *specifications*, of advertising for *sealed bids*, and of entering into a *long written contract* every time a mechanic or laborer is needed to *guard*, or to *care for*, or to *make* some alteration, or *start* some new improvement, or *do* some little repairing on the premises, building, or loose property thereabout. And yet if such a rigid, impolitic, and impracticable—if not impossible—construction is to obtain, this is *just what must* be gone through with in every instance where labor, mechanical or otherwise, has to be performed upon the New City Hall.

Not a man can be employed nor a dollar expended without strictly pursuing this unreasonable and unwise course in every case. If legislation is found to be *impossible*, it may be *entirely disregarded*. If it is found to be *impracticable*, then it may be read and construed so as to make the impracticable feature or features appear, in the light of the whole, *practicable;* and thus it may be *carried out*, as in this instance.

But in my opinion in the case before us we are not driven to any such straits in either construction or practice; and I think if you are not already convinced, a review and comparison of other provisions of the Act pertinent to this subject-matter will serve to convince you of the justness, cor-

rectness, and practicability of the principles *laid down* in said resolution, and herein contended for.

The *title* of the Act itself only provides for the "*completion*" of the New City Hall generally, and gives neither *indication* nor *hint* of any specific method or particular manner in which it is to be done.

Section 5 provides, among other things, in prescribing the duties of the *secretary* of this Commission, that he shall "keep an accurate account with each officer, clerk, contractor, and *employee*" under the Commission. Now, outside of the *Commissioners* themselves and *contractors*, the only persons intended or provided for in *terms* by the Act are *officers*, who are but three in number, and limited to the *secretary, architect*, and *superintendent of works*. And no *direct* or *special* provision is made for the appointment or employment of either *clerks* or other *employees;* yet a *positive* duty is strictly imposed upon the secretary to keep accurate accounts with *just such personages*, in addition to those with the officers and contractors.

It will not be contended that the secretary is charged with any such duty as keeping an accurate account with each *clerk* or other *employee* of the various contractors performing work or furnishing materials upon the New City Hall, over whom he has *no control*, and with whose affairs he has *no business*, and therefore no *means of knowledge* whatever. And as there are, outside of the Commissioners themselves, *no other* persons whom he is required to enter upon the books of this Commission, and with *whom* he is required to keep accounts, *except those four*—to-wit, officers, contractors, *clerks*, and *employees*—it is clear from the scope and tenor of this section alone that the Act contemplates the appointment or employment and payment of the *latter two classes* by this Commission.

But we will look in vain through the entire act for any *special grant* or *warranty* of any such authority.

Yet it will be readily admitted that both *clerks* and other *employees* are essentially and absolutely necessary to carry on the business and work of the Commission; and it would be absurd to hold that the law meant that accounts should be opened with them, and that they should be carried on the official books of this Commission, and at the same time deny that it was not intended that they could be *employed* and *paid* thereon.

We will also look in vain through the whole Act to find any restriction or limitation upon either the *number* of such persons which may be so employed, or *amount* of salaries or

wages which may be paid such employees, or the *nature* of their employment.

The *number*, *wages*, and *kind* of employment are all left entirely to the *discretion* and at the *option* and disposition of the Commissioners themselves.

They are charged with the *general business* of *building* and *completing* the New City Hall, under proper restrictions and suitable limitations, with the vast minutia and complicated details left unavoidably and necessarily to their judgment and discretion.

Section 10, in prescribing that particular *class* of powers and duties required to be performed by said Commission, by means of resolution, provides, among other things, that the "Board shall appoint officers, award contracts, allow claims, and *authorize the expenditure of money*, by resolution entered in the minutes," etc.; and further on provides for the publishing of "all resolutions appointing an officer, awarding a contract, allowing a claim, or *authorizing the expenditure of money*," etc.

The "expenditure of money" is a broad, expressive, and comprehensive term, without any restriction or limitation thrown around it whatever, except that implied from the language of the title and general features of the Act, and that expressed in a certain clause of Section 12, providing that "in no case shall *any portion* of said fund (meaning the New City Hall Fund) be used or expended for *any other purpose* than that herein indicated (meaning for the purpose of constructing and completing the New City Hall); nor shall *any part* of the cost of the construction of said building be paid out of any other or different fund," etc.

Hence, by these provisions it is evident that the "expenditure of money" by the Commission is circumscribed only by the *purpose* and by the *fund*.

For these objects, and out of this fund, they may disburse at their pleasure.

They are confined to *no other limits;* and so far as the expenditure of such fund for such purpose is concerned, they may purchase materials or labor in their discretion, when, where, and of whom they please.

Within these metes and bounds the Commissioners may travel at will.

Section 12 also provides, among other things, in further defining the powers and duties of the Commission, that "The Board of Commissioners, in each fiscal year, may make contracts and *expend* in the construction of said building (meaning the New City Hall) a sum equal to the estimated receipts

(meaning the estimate fixed by the Act at 15 cents on the $100) of the fund during the current fiscal year, but no larger or greater sum." Thus using the general term *expend* in the broadest and fullest sense, without qualification or restriction whatever, except to limit it to the "estimated receipts of the fund during the current fiscal year" (meaning the New City Hall fund).

Section 13, after prescribing the powers and duties of the Commission as to the first moneys coming into the said fund, goes on to provide that other moneys coming into the said fund, shall be *expended*, as far as practicable, without increasing the cost of the work, in completing, from time to time, other parts of said building," etc. Again employing the same broad and significant *form of expression*, by the use of the the word "*expended*" in its widest meaning in reference to the finishing up of certain portions of the building, qualified only by *practicability* and *cost*, in this instance.

Section 14, after first prescribing how bids for material or work may be sought and obtained by the Commission, is careful to provide that the "Board of Commissioners shall have the right to *reject* any or all bids when, in their judgment, the *public interests are thereby promoted.*" Thus showing unmistakably that they are *complete masters* of the situation, and have absolute control over the entire matter, subject only to the proviso as to the *rejection of bids promoting the public interests*, of which they are by terms made the *sole* and *exclusive judges*.

Then, if they can reject *any* bid at all, they can for the same reason likewise reject *more* and *all* of the same kind of bids. And if they can reject *any one kind* of bids, they can for the same reason reject *more kinds*, and in like manner *all kinds* of bids.

As will readily appear, therefore, they can, if in *their judgment* the *public interests will thereby be promoted, reject any* bid of *any class*, or *all bids* of *any class*. For instance, they can reject any bid for a *certain class of material*, and for the same reason may likewise reject *all bids* for *that class of material*, and by the same process can reject *any bid* for a *certain kind of work*, and for the same reson may reject all bids for that kind of work. And for that matter, as we have already seen, they have the power to extend the operation of rejection to *all classes* of *material* and to *all kinds of work*. Now, admitting for the sake of argument that Section 14 is positively mandatory, and not merely directory, as we have already shown, to the extent of requiring the Commission *in the first instance* to proceed under the method of *sealed proposals*, then all the

Commissioners would have to do to *defeat* the *plan*, in whole or in part, would be to advertise for and obtain bids and then reject them in whole or in part, on the ground of *promoting the public interests, claiming* that they were carrying out the *spirit* of the law, while no one could deny that they were complying with the *letter* of the law, and then turn around and buy material or labor from whom and in whatever manner in *their judgment would promote the public interest.* And who could gainsay it? No one! Or, go a step farther, and grant all that can *possibly be claimed for the section,* that the *mandate reaches* and covers the *whole subject-matter* of the supply of material and labor, and that when bids are once rejected for any cause, the Commissioners must advertise for more, and as often as bids are rejected must continue to advertise for more bids that will be acceptable to them. Even then they have it in their power, if so disposed for any reason, under the pretense of carrying out the *spirit,* while it cannot be doubted that they are complying with the *letter* of the *law,* by continuing the process of rejection, *perpetually defeat* the whole system, and thus *entirely suspend* the work of construction and *indefinitely postpone* the *completion* of the "New City Hall."

Or take another view of the matter from a different standpoint—this time from that of the *contractors,* instead of the Commissioners, and it will be readily perceived how completely the Commission and the city would be at *their mercy* in the business of *building* and *completing* the "New City Hall," if we were forced absolutely to depend upon the *old contract system* for the supply of all our material and labor. At once it will be recognized how easily a combination of contractors for *all classes* or *any class* of *material,* or *all kinds,* or *any kind* of *work,* could *block* the *entire game, force* us to its *own terms,* or leave us to *whistle,* as it were, and the city to suffer. Suppose the contractors for materials of *all kinds pool their issues,* which is not an uncommon occurrence as all know, and present only *one* bid, or *uniform* bids, for *each class* of material, and reaching the whole supply of material, at such *exorbitant figure* or figures, that it would be *suicidal* to accept; and that as often as such are rejected, only the *same* or *similar* bids are offered on re-advertisement, what could you do? *Nothing,* but continue repeating the *expensive* and *fruitless experiment.* Or, suppose we reduce it from the *whole* down to *one* or *more classes* or *items* of material, and we shall find that the *result* will prove to be the same.

Take *cement* or *brick* for an example, and such a *corner* made on either as has just been instanced, and the entire

masonry work on the structure immediately *stops*, and cannot possibly proceed until the combination is either *beaten* or its terms *conceded*. And in like manner the work of masonry affects *all work* that has to come *after* it; and neither *carpentering*, nor *plastering* work, nor any *other* work can *go forward* until the *siege* is *raised* and the *dead-lock* is *broken*, thus leaving the whole to *stand idle*, and what has already been done to *fall into decay*.

And, without attempting to carry it out in *detail* by the same mode of reasoning and method of deduction, it will be found that the same identical result follows a like *combination* on *labor* as on material; and thus the whole matter of labor is likewise at the disposition and dictation of any like corrupt or merciless *ring* or *combination* which is governed by moneyed influence or political power, and formed and maintained to monopolize and control it.

If we could be held to deal only with *contractors* or *middlemen*, who speculate and trade on the labor of others, and *not with the producers* of labor themselves, you will readily perceive how easily they could form themselves into a *ring*, run up the *amounts* of their *bids* to fabulous prices, or *reduce* the *wages* of labor to such low figures that no *white man* could afford to work, and thereby force the Commission to *accept their terms*, or permit them to employ *Chinamen* in violation of law, or suffer the building to *rot down* for want of continuation and completion.

Take the case of those who *contract* for doing *brick-work*, for instance, and you will see that, by making it impracticable or impossible to get the work done *except through them*, they can *clog* the *wheels* of the whole machine, and render the Commission utterly powerless. And it is *not enough* to say —it is *no answer* to say—that those contingencies are not *likely* to arise. As long as they exist they are *liable* to occur, and we are bound to construe the law so as to cover *every contingency*. It must be interpreted in the *light* of every emergency. If such things *may take place*, it is our duty to provide against them the same as if they were actually taking place. If such things are *possible*, then it must be conceded that the Legislature *contemplated just such a state of things;* and if so, we must give a *reasonable intendment* to them in our construction. Whether they ever come to pass or not, we are to act on *principle* just as though they would come, or actually were coming, to pass. And how are we to know they will not take place? It must be remembered that we, as a community, are still very much *limited* in some of these very commodities, and are some considerable dis-

tance from the *great centres* and *sources* of supplies, and that we are by law, *and rightfully so, too*, restricted both directly and indirectly as to the commodity of labor. Besides, it is a cardinal principle with *us*, and ought to be with *all*, to employ only *home productions* of both material and labor.

By Section 12, as will be seen, the Commission is only further limited, so far as labor is concerned, to that exclusive of *Chinese* or *Mongolian*, and so far as material is concerned to that exclusive of that which is produced by *Chinamen* or *Mongolians*.

And this special restriction as to the character of labor to be employed, is the only positive limitation there is placed upon the *employment of labor* upon the New City Hall; and by virtue of the negative words used to express that prohibition, is the only provision in the entire statute, relating to the employment of labor, that is *mandatory*, and must be strictly followed.

Section 18, after providing that neither the Commissioners nor officers shall be interested in any contracts upon the New City Hall, goes on to further provide in these significant words: "Nor shall either of them be allowed to receive any gratuity or advantage from any contractor, *laborer*, or *person furnishing labor*, or materials," etc.

And here again, and as unmistakably as before, the Legislature have taken pains to draw the distinction between the two classes; the contractors on the one hand, and that of laborers, or persons furnishing labor, on the other.

For it would be inconsistent and absurd to say that the language employed was intended to reach and embrace only those laborers, or persons furnishing labor, under the direct and exclusive employment and management of the *contractors*, as they could in no way become connected with, be held responsible to, nor be made dependent upon either the Commissioners or their officers, and therefore would have no motive nor incentive to contribution to, or bribery of, either the one or the other.

If such a foolish and untenable construction were attempted, it would be found that the law would be left *without a reason* upon which to *base* it, and thus, swept of all foundation whatever, would fall to the ground of itself.

If there were no other provision relating to this particular matter in the whole Act, I am satisfied that this section alone ought sufficiently to *prove* to *intelligent* and *unbiased minds* that it was both conceived and intended by the framers and passers of the Act, that work upon the New City Hall should and would have to be done by *others* than contractors.

But the section goes further, and characterizes the Act of receiving such a gratuity or advantage a *felony*, and prescribes severe penalties for it by the payment of heavy fines and the serving of long terms in the penitentiary, which could neither be incurred by the *officials* nor inflicted by the authorities, with both the immoral motive and the criminal intent removed from the actions of the parties concerned.

It is neither immoral nor criminal, within itself, for any one to grant, and any other to receive, a gratuity or advantage of any kind.

In such a connection as this, it is only where the giver is dependent upon the receiver, and the receiver has official power over the giver, and the one exacts and the other concedes a consideration for official favors bestowed.

But in law, there is no more reason why an employee of one who happened to be a contractor upon the New City Hall, might not, on his own account and individuality, make a present to any friend, who happened to be an official, with whom he had no connection whatever, and to whom he was in no way responsible, and upon whom he was in no manner dependent for his employment, than by any other person whomsoever.

Then if such could be done, under such a construction, the Legislature would be guilty of, and chargeable with, the *folly* and *absurdity* of creating a high offense and affixing a severe penalty for a class of persons that could never be reached, and to cover a class of criminal cases that could never arise.

I have thus followed this provision in its different phases, and through its different bearings, to demonstrate to you that the section has reference to something, and means *something* —and that something is, that other labor than contract labor upon the New City Hall is clearly contemplated and plainly meant.

Section 19 provides, that "any public officer or employee of the City and County of San Francisco, in any way connected with the construction of the City Hall, who shall willfully aid or assist a bidder for a contract," etc., shall be guilty of a misdemeanor and punished as therein prescribed; which only goes to constitute additional evidence, and to further prove the correctness of the reasoning and conclusion arrived at under Section 18.

Section 20 also provides, that "any officer or *employee* who," amongst other things prohibited, "shall knowingly or carelessly certify to the correctness of a claim of a contractor, or other, for work or labor, or material, for more than such contractor is lawfully entitled, or who shall will-

fully or carelessly certify that a greater amount of work or labor has been performed than has been actually done," etc., "with the intention of defrauding," etc., shall be guilty of a misdemeanor and punished as therein prescribed.

Thereby furnishing still more, and if possible greater proof, that the Act throughout presupposes the *employment of persons outside* of the contract system, as commonly understood and practiced.

And thus, having wended our way cautiously and critically through the entire *frame*, *web*, and *woof* of the Act, penetrating the *inmost recesses* and *laying bare* the *most secluded portions* as we have gone, we find ourselves at last at the *outcome*, with the satisfaction of believing and feeling, all, as I trust, that the Legislature has wisely and justly made ample provision for, and clothed the Commissioners with, sufficient power over the employment of labor in, upon, and about the New City Hall, as they may, in the exercise of a prudent discretion, deem *best* for the interests of the *public at large*, to whose interests as a *whole* they are bound to look, in the aggregate, and not as to those of a small portion only, in the segregate.

But let us turn and see how others, whose duty it has been to construe and administer these same provisions, looked at this proposition, and what practice they followed under like circumstances. Let us go back to the operations of those who have been required to travel over this same road and traverse this same ground before us, and examine *their* record, and see what *precedents* they have left behind them to guide those who must come after them.

Work upon the New City Hall was commenced under the present law, about the beginning of the fiscal year 1876–77, by our predecessors, and the record shows the employment by them of the following employees, by the day, week, or month, as the case may be, and *otherwise* than under contract, as follows:

OLD COMMISSION.

Fiscal year.	No. of Months.	Foremen, &c.		Mechanics, &c.		Laborers, &c.		Employees.	Days.	Amount of Fund.
		No.	Days.	No.	Days.	No.	Days.			
1876–7	12	55	1543	22	660	90	1284	167	3487	$ 333,331 72
1877–8	12	58	1740	47	1380	78	1218	183	4338	347,633 67
1878–9	12	56	1680	29	1564	78	1108	163	4352	340,712 92
1879–80	5	3	90	26	600	12	202	35	892	47,530 07
	41							548	13069	$ 1,069,208 38

NEW COMMISSION.

1879–80	7	26	780	28	840	244	3256	298	4876	$66,542 12
1880–1	2	2	60	8	240	97	721	107	1021	
	9							405	5897	

From this interesting and instructive table, which I have with much trouble and care prepared for your information, it will be seen that our predecessors, who evidently fully believed in the contract system, and spared no pains to carry it out, either considered they *had authority* for employing such men, or else they *deliberately violated* the law.

But no question as to the validity of *their* acts was even thought of, and no one ever supposed that they were misconstruing or running counter to the law.

But while it is observed that they employed men in this way to a considerable number, yet they were not so liberal as the present Commissioners.

It will be perceived, on comparison, that in a period of 41 months, in making an expenditure of $1,069,208, they employed but 548 men for only 13,069 days, while the present

Commissioners have, in a period of *nine* months only, in making an expenditure of but $66,542, given employment to 405 men for 5,897 days.

What was done then can be done now, and any one who did not object then will have the same reason to hold his peace now, unless it be to serve some selfish motive or political purpose.

All we have to do now is to follow the same practice as then, only enlarging and improving the service in that regard.

And I believe that both facts and figures will bear me out in the assertion, that the work on the New City Hall can, and should, without cutting down wages below standard rates, be done as cheap, and even cheaper, and as well and even better, by employing men by the day, than under the old contract system, as it has heretofore been conducted in this city and county.

Since the compilation of the above table, the members of this Commission have felt themselves authorized and justified in employing by the day about one hundred extra men, and it would certainly puzzle a Philadelphia lawyer even, to satisfactorily account for the reason why, if it is lawful to employ one hundred men one month it is not lawful to employ them the next month; and why, if it is justifiable to employ a large force of men, or any men, just *before* a convention or an election, it is not justifiable to employ the same or other men just *after* a convention or an election, provided there is work to do and money to pay for it.

It would seem to be in order for those who are in doubt or in opposition, to explain why the action of this Commission under this identical law was valid yesterday and not valid to-day, or why this same law may be violated with more impunity to-day than to-morrow; or why it happens to be discovered to be illegal at this particular time.

But happily we are not confined to our immediate predecessors in office alone, nor to this city and county even, for precedents for the employment of labor by the day on the public improvements. Take the case of the construction of the Branch State Prison near the town of Folsom, and what do we find? Why we find that a Commisson, composed entirely of Democrats (Governor Irwin, Lieutenat-Governor Johnson, and Secretary Beck), acting under a stronger and more stringent law in favor of labor by the contract system (approved March 30, 1874) than the one we are now laboring under, did not hesitate to employ men by the day, but even went so far as to take work out of the hands of contractors and give it out by

the day. There the Commissioners were not only enjoined to advertise for bids in the first instance, but in addition to the requirements of our law were specifically required to advertise "anew" as often as they were rejected. And by laying the two acts side by side and comparing them together throughout, it can be seen at a glance that the power of discretion of the Commissioners is in that Act far more limited and restricted than in this one. Yet they had the courage to exercise a wise and humane discretion in the matter of labor, and no one felt called upon nor had the hardihood to raise a voice against it, or attempt to stop them by a resort to the Courts, or otherwise. If this was good Democratic doctrine then, why not now? If it was a safe Democratic practice then, why not now? And if the doctrine and practice were good enough for Democrats then, why not good enough for Workingmen now? If Democratic officials could take such responsibilities then, why not Workingmen's officials now? If such men did not halt between two opinions then, why need we now? And especially when it is remembered that those officials were never guided by the pledges nor bound by the ties that we are. And if we will only turn to our own proud and magnificent State Capitol at Sacramento, we will find another living example of, and powerful precedent for, the cause of day's labor on our public works. I believe there are workingmen in this city to-day who worked upon it, who will bear me out in the statement that it is one of the best and most cheaply constructed public buildings in the Union, and it was mostly if not entirely erected and completed by day's works, under our own laws at that.

Still other examples might be added and other precedents might be cited, but what is the use of going further. Unless the right disposition is found, the law always presents barriers, and precedents go for naught. If the spirit is wanting, the imagination can always discover a bugbear in any statute. When the heart is in the work, a way is easily found.

If such a course can be pursued and such things be done under more restrictive laws, let me ask what may be done under more liberal laws? If such is possible and practicable under the "old Constitution," which is entirely silent upon the subject, let me inquire what is possible and practicable under the "new Constitution," which, in Section 17 of Article XX, speaks in no unmistakable terms that "eight hours shall constitute a legal day's work on all public work," and

by which it is evident that its framers clearly contemplated that such work might and should be done by the day.

But let us turn from the record of fact and example in the matter of building, and take a glance at the authorities for law and precedent in the construction of statutes of this character, beyond the reading of the statute itself,

And for this purpose it would seem unnecessary to go further than to read from our own able and authoritative law writer on "Constitutional and Statutory Limitations," from the University of Michigan, and Supreme Bench of Michigan, Judge Thomas M. Cooley.

In his great work on "Constitutional Limitations," while treating of "Directory and Mandatory provisions," this profound thinker and acknowledged commentator says:

"The important question sometimes presents itself, whether we are authorized in any case, when the meaning of a clause of the Constitution is arrived at, to give it such *practical construction* as will leave it *optional* with the department, or officer to which it is addressed, to obey it or not as he shall see fit. In respect to statutes, it has long been *settled* that *particular provisions* may be regarded as directory merely, by which it is meant that they are to be considered as giving directions which ought to be followed, but not as so limiting the power in respect to which the directions are given that it cannot effectually be exercised without observing them."

This, as will be seen, fits the case before us exactly; as the only question as to the statute in this instance being considered mandatory or directory, arises on that particular provision relating to the mode or manner of doing the work or furnishing the material, and not to the real object of the Act at all.

Under this head, and in support of this proposition, Judge Cooley quotes an opinion of the Supreme Court of New York, afterwards approved by the New York Court of Appeals, and which lays down the rule as one settled by authority, that "statutes directing the mode of proceeding by public officers are directory, and are not regarded as essential to the validity of the proceedings themselves, unless it be so declared in the statute."

And in a late case in Illinois, the Supreme Court of that State, in the matter of ascertaining and assessing damages upon real estate benefited for local improvement, by Commissioners, who were required by the statute to sign and return their award within a specified time, but who failed to comply with the law in that respect, and made return after-

wards, after deciding that the case would turn upon the question as to whether any advantage would be lost, or right destroyed, or benefit sacrificed, either to the public or parties affected, goes on to hold in these express words, that "There are no negative words used declaring that the functions of the Commissioners shall cease after the expiration of the forty days, or that they shall not make their return after that time; nor have we been able to discover the least right, benefit, or advantage which the property owner could derive from having the return made within that time, and not after, * * * as the property owner has the same time and opportunity to prepare himself to object to the assessment and have it corrected." And likewise it would seem difficult, if not impossible, to see what advantage would be lost, or right destroyed, or benefit sacrificed, either to the city or the public at large, in further pursuing the mode here proposed for doing the work we have to do, and which has been, and is being, followed to a considerable extent.

Chief Justice Shaw, of Massachusetts, in the celebrated tax case of *Torrey* vs. *Millbury*, says:

"In considering the various statutes regulating the assessment of taxes and the measures preliminary thereto, it is not always easy to distinguish which are conditions precedent to the legality and validity of the tax, and which are directory merely, and do not constitute conditions. One rule is very plain and well settled that all those measures that are intended for the security of the citizen, for insuring equality of taxation, and to enable everyone to know with reasonable certainty for what polls and for what real estate he is taxed, and for what all those who are liable with him are taxed, are conditions precedent; and if they are not observed, he is not legally taxed, and he may resist it in any of the modes authorized by law for contesting the validity of the tax. But many regulations are made by statutes designed for the information of assessors and officers, and intended to promote method, system, and uniformity in the modes of proceeding, a compliance or non-compliance with which does in no respect affect the rights of tax-paying citizens. These may be considered directory."

And if in such a vital matter as taxation itself the mode of proceeding does not seriously affect the rights of taxpayers, so in this far less important matter will it be hard to find wherein, more fully following the mode of proceeding proposed, which has been partially followed from the start, will injuriously affect the rights of this community.

The Supreme Court of Wisconsin, in a noted case involv-

ing the construction of statutes upon the point of being mandatory or directory, held:

"We understand the doctrine concerning directory statutes to be this: That where there is no substantial reason why the thing to be done might not as well be done after the time prescribed as before, there is no presumption that by allowing it to be so done it may work an injury or wrong."

And as mode of doing and time of doing stand substantially in the same relation and on the same footing to the thing itself to be done, by analogy or reasoning, "there is no substantial reason why the thing to be done might not as well be done" in a different manner from that pointed out by the statute.

Judge Cooley further says, in his admirable work before mentioned, that "Those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly and prompt conduct of the business, and by a failure to obey which the rights of those interested will not be prejudiced, are not commonly to be regarded as mandatory; and if the act is performed, but not in the time or in the precise mode indicated, it may still be sufficient, if that which is done accomplishes the substantial purpose of the statute. But this rule presupposes that no negative words are employed in the statute which expressly or by necessary implication forbid the doing of the act at any other time or in any other manner than as directed."

And in support of this doctrine he cites a large number of the most important cases, bearing directly on this question, from the highest Courts in the States of Massachusetts, Vermont, Illinois, Pennsylvania, Maryland, Connecticut, Ohio, Michigan, Nebraska, Indiana, Wisconsin, Louisinna, Montana, Texas, California, Alabama, New York and other States.

He also refers to the masterly work of Mr. Sedgwick on "Statutory and Constitutional Law," and quotes the renowned Lord Mansfield of England, who long since firmly laid down the doctrine—which has never since been departed from, and will live as long as enlightened law itself—that whether a statute is mandatory or not depends upon whether that which is directed to be done, is or is not of the essence of the thing required.

Now let us try the matter we have in hand by this plain and easy rule, and see how it works. Then what is the principal thing to be done by us under the "New City Hall" Act? You can see at a glance that it is not the letting of

contracts, nor the purchasing of material or the hiring of labor in any particular manner. As you can readily perceive, these are merely preliminary measures to securing the main object sought by, and incidental forms and modes of proceeding to accomplish the real purpose of the statute. As you can clearly understand, they are but the *shadow*, and *not* the substance—only the *forms*, and *not* the essence.

The principal thing to be done—the real purpose to be accomplished—the main object to be attained—the actual duty to be performed—the great business to be consummated by us—is the completion of the New City Hall. Nothing short of this, and nothing beyond this. This is our beginning and our ending. All else is but incidental and tributary. The completion of the building is the chief business to be carried on and carried out by us, and all other things connected with it are but helps to that purpose and means to that end. And as Judge Cooley wisely and correctly says, all we could be expected and would be compelled to do, even under the directions prescribed by the Act itself, is to carry out the "the subtantial purpose of the statute," which is none other than the completion of the New City Hall.

More especially is this true, since there are no words of a negative character whatever, either in this particular provision or anywhere else in the entire Act, to take the proposition out of the operation of this rule, by either expressly or impliedly forbidding the doing of work in the manner here proposed.

Mr. Justice Allen G. Thurman, of Ohio, who is acknowledged by all to be one of the very profoundest jurists in the land, in considering the much higher and stronger case of the constitutionality of a statute whose validity was assailed on the ground that it was not passed in the mode prescribed by the Constitution, treats the question at length, and in this able and conclusive manner:

"By the term *mode*, I do not mean to include the authority in which the law-making power resides, or the number of votes a bill must receive to become a law. That the power to make laws is vested in the Assembly alone, and that no Act has any force that was not passed by the number of votes required by the Constitution, are nearly or quite self-evident propositions. These essentials relate to the authority by which, rather than the mode in which, laws are to be made. Now, to secure the carful exercise of this power, and for other good reasons, the Constitution prescribes or recognizes certain things to be done in the enactment of laws, which things form a course or mode of Legislative procedure. Thus

we find, *inter alia*, the provision that every bill shall be fully and distinctly read on three different days, unless in case of urgency three-fourths of the House in which it shall be pending shall dispense with the rule. This is an important provision, without doubt; but, nevertheless, there is much reason for saying that it is merely directory in its character, and that its observance by the Assembly is secured by their sense of duty and official oaths, and not by any supervisory power of the Courts. Any other construction, we incline to think, would lead to very absurd and alarming consequences. If it is in the power of every Court (and if one has the power, every one has it) to inquire whether a bill that passed the Assembly was 'fully and distinctly' read three times in each House, and to hold it invalid if, upon any reading, a word was accidentally omitted, or the reading was indistinct, it would obviously be impossible to know what is the statute law of the State.

"Now, the requisition that bills shall be fully and distinctly read, is just as imperative as that requiring them to be read three times; and as both relate to the mode of procedure merely, it would be difficult to find any sufficient reason why a violation of one of them would be less fatal to an Act, than a violation of the other."

This opinion was afterwards affirmed and recognized as the law by the Supreme Court of Ohio, in which it is held that:

"The provision that no bill shall contain more than one subject which shall be clearly expressed in its title, is also made a permanent rule in the introduction and passage of bills through the Houses. The subject of the bill is required to be clearly expressed in the title for the purpose of advising members of its subject when voting in cases in which the reading has been dispensed with by a two-thirds vote. The provision that a bill shall contain but one subject was to prevent combinations by which various and distinct matters of legislation should gain a support which they could not if presented separately. As a rule of proceeding in the General Assembly, it is manifestly an important one. But if it was intended to effect any practical object for the benefit of the people, in the examination, construction, or operation of Acts passed and published, we are unable to perceive it. The title of an Act may indicate to the reader its subject, and under the rule each Act would contain one subject. To suppose that for such a purpose the Constitutional Convention adopted the rule under consideration would impute to them a most minute provision for a very

imperfect heading of the Chapters of Laws and their subdivision. This provision being intended to operate upon bills in their progress through the General Assembly, it must be held to be directory only. It relates to *bills*, and not to *Acts*. It would be most mischievous in practice to make the validity of every law depend upon the judgment of every judicial tribunal of the State as to whether an Act or a bill contained more than one subject, or whether this one subject was clearly expressed in the title of the Act or bill. Such a question would be decided according to the mental precision and mental discipline of each Justice of the Peace and Judge. No practical benefit could arise from such inquiries. We are therefore of opinion that, in general, the only safeguard against the violation of these rules of the Houses is their regard for and their oath to support the Constitution of the State."

I read to this extent from the text of these exhaustive and convincing decisions, which constitute the law as to constitutional as well as statutory construction upon this important subject in the great and advanced State of Ohio to-day, and, in fact, throughout the Union, except, as in our own State, where the Constitution itself, by express terms, makes all its provisions either mandatory or prohibitory, in order to show the natural inference, and draw the inevitable conclusion therefrom, by leading your minds directly to the pertinent inquiry that if such is the broad and liberal rule of grave constitutional construction involving the very proceedings of the law-makers themselves in making the law, what must be the breadth and liberality of the statutory construction of the ordinary proceedings of officials in their proceedings under that law? And I feel that, in order to convince you how much higher and narrower the rule of construction is when applied to the Constitution instead of a statute, I need only quote the forcible language of Mr. Cooley himself, wherein he says:

"The Courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a Constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are looked upon as essential to the thing to be done; and they must then be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character, to establish those fundamental maxims and fix

those unvarying rules, by which all departments of government must at all times shape their conduct; and if it descends to prescribing mere rules of order in unessential matters, it is lowering the proper dignity of such an instrument and usurping the proper province of ordinary legislation. We are therefore not to expect to find in a Constitution, provisions which the people in adopting it have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves."

From all which the difference between the rule as applied to the Constitution and the statute, and the balance in favor of the statute, are too obvious and striking to require further quotation or discussion. It only remains, therefore, necessary to refer to Judge Cooley but once more in regard to the force and effect of the actions of officials exercising discretionary power under the statute, wherein he asserts that:

"Great deference has been paid in all cases to the action of the executive department, where its officers have been called upon, under the responsibilities of their official oaths, to inaugurate a new system, and where it is to be presumed they have carefully and conscientiously weighed all considerations and endeavored to keep within the letter and spirit of the Constitution. If the question involved is really one of doubt, the force of their judgment, especially in view of the injurious consequences that may result from disregarding it, is fairly entitled to turn the scale in the judicial mind."

And in precisely the same category, and in no less a light, would stand the actions of this Commission in the eyes of the Judiciary, in the employment of labor upon the New City Hall, even if there were any doubt of their right to exercise a discretion in the matter, or if they were to inaugurate and carry on an entirely "new system" under a provision of the Constitution itself, instead of a statute merely.

Again, Dwarris, a distinguished and reliable writer on the law of statutes, asserts "That it may be stated as the general rule that where a statute directs certain proceedings to be done in a certain way or at a certain time, and the form or period does not appear essential to the judicial mind, the law will be regarded as directory, and the proceedings under it will be held valid, though the command of the statute as to form and time has not been strictly obeyed—the time and manner not being of the essence of the thing required."

In 6 and 7 Hill's N. Y. Reports it is held that "The true distinction as to mandatory and directory statutes is this—Where the provision of the statute is the essence of the thing required to be done, and by which jurisdiction to do it is claimed, it is mandatory; otherwise, where it relates to form and manner, and where an act is incident, as after jurisdiction has been obtained, it is directory."

In the case of *Pierce* vs. *Morris*, 2 A. and E. 94, the Court says: "I understand the distinction between directory and imperative statutes to be that a clause is directory when the provisions contain mere matters of direction and nothing more; but not so when they are followed by such words as are used here—viz., that anything done contrary to such provisions shall be null and void to all intents," etc.

In 1 Baldwin's Reports, it is held that "The provisions of a law which is merely directory are not to be construed into conditions precedent."

And Dwarris on Statutes says, "When the terms of a statute leave room for any administrative discretion to be exercised, it cannot be interpreted to be mandatory, or to be a condition precedent."

And thus we might go through and exhaust the entire catalogue of reports of States and works of eminent men, but leaving that vast array of authorities behind, and coming on down to the more familiar but well-established jurisprudence of our own fair State of California, we readily find that we need go no further for ample legal warrant and judicial precedent for our action in this matter.

In the 4 California Reports, in the case of *Vermule* vs. *Shaw*, involving the construction of Section 180 of the Practice Act, which provides that, "upon the trial of an issue of fact by the Court, its decision shall be given in writing, and filed with the Clerk, within ten days after the trial took place. In giving the decision, the facts found, and conclusions of law, shall be separately stated. Judgment upon the decision shall be executed accordingly." Our late Justice Heydenfeldt, delivering the opinion of the Court, said:

"We therefore decide that, as to the time required for the written decision to be filed, or the relative order in which it should be done, the Act is only directory."

And again, in the 49 California Reports, in the late case of *Lamont* vs. *Solano County*, involving the construction of Section 632 of the Code of Civil Procedure, which provides that, "upon the trial of fact by the Court, its decision must be given in writing, and filed with the Clerk within twenty days after the cause is submitted for decision; and unless

the decision is filed within that time, the action must be tried again." Our recent and acknowledged Chief Justice Wallace held, speaking for the Court, "we are of opinion that the provision in the statute is directory merely."

And if to such an extent the directory rule is carried by a Judge, in the most important litigation of the country, covering the vast domain of civil rights and property interests of the people, to what length may a mere ministerial officer go in exercising a discretion in executing the simple directions of an ordinary statute?

The word "shall," in the first case, is precisely the same word used in Section 14th, the "New City Hall Act," without the qualifying and modifying effect of the precedent word "when." And the word "must," in the last case, in its double use and surrounding connection, is certainly as imperative in its import as the word "shall." And in a still later case of *The People* vs. *The Supervisors of the County of San Luis Obispo*, our present very able and much esteemed Justice McKinstry, in construing an Act of the Legislature of this State, empowering and requiring the Board of Supervisors of San Luis Obispo County to issue county bonds for improving the public roads of the county, took occasion to say that, "The word 'required' in the first section may be rejected in accordance with the principle, that part of a statute may be held unconstitutional, and the rest valid, unless it appear that the Legislature would not have approved the portion which they have power to enact, disconnected from that which is void. Indeed it may be laid down as a rule, in this class of statutes, that where the word 'shall' is used, it should ordinarily be construed to be the equivalent of 'may.' Words imperative should be interpreted as *permissive*, in order to give all possible effect to the intention of the Legislature."

And I might, with equal confidence and like success, carry you with me into the 42, 44, and 49 California Reports, and in fact through nearly every Report in the State, in further support of the same rule and practice, but I do not care to go any further, and will here rest the law of the matter, without either doubt or fear of the consequences.

It now remains only for me to finally say, that this Commission must decide for itself, now and forever, whether it will hire the labor upon this Hall directly from the men who perform it, and pay them the profits there is to be made on it, or whether they will employ others who buy and sell labor second-hand to hire it for them, and let them pocket the proceeds to be derived from it.

There is left to this Commission but one of the two courses.

There is no half-way ground to be occupied, and no middle direction to be pursued. It is simply one thing or the other.

The provision of the Act under consideration is either altogether mandatory or only directory.

If considered to be mandatory, this Commission must absolutely obey it. If held to be directory merely, then they may exercise a reasonable discretion.

If mandatory, they must positively hire all labor, and purchase all material by contract, awarded upon sealed bids.

If directory, then they may employ labor by the day or otherwise, as they deem best.

If mandatory, every man now employed by them, not under special contract awarded upon sealed bids, must be discharged, and no more employed. If directory, then those men employed by the day, week, or month may not only be retained, but as many others as are found to be necessary or profitable may be in like manner employed. For there is no authority whatever in the statute, outside of this construction, to warrant or justify the employment of labor of any kind otherwise than under the old contract system.

The work of discharge cannot be stopped half-way, or anywhere short of the end. It must be as far-reaching and sweeping as the mandate is absolute and imperative. The whole must go, or none need go. If one may stay, all may stay; and if any at all may stay, more may come. Are you prepared—are you ready to begin the work of discharge? Then discharge these employees, and they will be turned over to the tender mercies of contractors, or be compelled to find work elsewhere, and where I fear it is not to be found.

Discharge these men, and the thousand one little repairs about this extensive building, needing constant attention, cannot be made, nor the unavoidable extra work be done, and the structure must suffer from the consequences.

Discharge these men, and its ornamental and costly grounds, needing continual care, must be neglected and go to ruin.

Discharge these men, and all this vast property must go unwatched in day, and unguarded at night, and left exposed to the ravages of the elements and the spoliation of the vicious and destructive.

Discharge these men, and the Commissioners will have to neglect their more important and vital duties in other official fields, and devote themselves almost exclusively to the minutia

and details of this great work. Are they prepared to go into such a complicated and untried business by themselves?

Discharge these men, and the secretary must *individually* undertake and perform the entire work of keeping all the different books, the papers, and the records of one of the most important branches or departments of the municipal government; must *personally* attend and look after the business of every meeting, general or special; must, with his own hands, write up the full and correct minutes of all proceedings of the Board of Commissioners; must himself keep accurate and complete accounts of all the receipts and disbursements of nearly or quite half a million of dollars during this fiscal year; must keep full and correct accounts with all the officers, all the clerks, all the contractors, and all other employees; and must, by himself alone, perform all the other varied and laborious services necessarily and unavoidably required of him and his office in, upon, and about the New City Hall. Do you think he could do all this without assistance?

Discharge these men, and the architect must, by his own hands, prepare all the long and critical plans and specifications, and make all the elaborate and difficult drawings and tracings for the same; must personally examine and judge of the quality and durability of all the countless materials of every kind and nature used in the construction, and must individually examine all the work done of every kind and description, and by himself positively ascertain that every vestige of it is done in a good, in a substantial, and in a workmanlike manner, and in exact accordance with the plans, specifications, and drawings which he has, unaided, first prepared for the whole building, and such other important and multifarious duties as may be imposed upon him and his office by this Commission. Does any one imagine that he can do all this without aid before July 1, 1881?

Discharge these men, and the superintendent of works must, at all times during the performance of any and all work, and the furnishing of any or all materials, be present in person, and himself also see that every part of work is done in a good and substantial and workmanlike manner, and that every portion of the materials used comply in all respects with the description and quality called for in the plans and specifications for the work; and he must individually perform all other and further duties as must inevitably, and from the very nature of his position, be required of him and his office by this Commission connected with the con-

struction and completion of the New City Hall. Does any one supposes that he can do all thi without help ?

Discharge these men, and the three members of this Commission, with the aid alone of the three officers specifically provided for in the statute, must undertake to rightfully and successfully superintend, direct, manage, supervise, carry on, and carry out to final completion, in a very brief time, the most important, costly, and valuable of all our internal public improvements, in either city or State. Does any one think that we could do either ourselves or the public justice by such a narrow construction and absurd proceeding? This is just what the strict rule of mandate that has been invoked against us would lead us to in both law and practice. Let us avoid all such maelstroms and quicksands, and steer clear for smooth water and fair sailing. Let us take the politic, wise, and just course, so clearly pointed out to liberal and fair-minded men, and leave the rest to the people whom it is our duty to serve.

This vast and costly structure is not being built for to-day, but for to-morrow, and for the next day, and for the great hereafter as well. It is not erected for the occupancy of us only, but for our children, and our children's children, who are also to come after us. This immense and expensive structure does not belong alone to those who now pay taxes to rear it, but it is also the inheritance of those who must hereafter pay taxes to preserve and maintain it. This monstrous pile is not the exclusive property of the rich, whose money buys its materials and pays for its erection, but it is likewise the possession of the poor, whose skillful hands and strong arms have laid deep its solid foundations and will raise aright its stupendous walls and lofty towers. This grand and magnificent hall, with its beautiful and inviting grounds, and its elaborate and tasteful ornaments, when completed by us, the servants, and delivered over to our masters, the people, will then stand not only as a proud and living monument of the bounty and munificence of the more fortunate owners of the property, whose thrifty proceeds shall have paid the final farthing of its purchase price, but will at the same time rear its monstrous head and lift its piercing pinnacles in bold relief, as an humble but enduring memorial to the genius and enterprise of their less fortunate brothers, whose trained hands and steady nerves spread the uniting mortar and gluing cement, and laid the connecting bricks and binding stones, and attached the fitting joints, and drove home the clinching nails; and whose physical endurance and patriotic devotion must ever guard

and protect it against the ravages of storm and flood and flame, as well as from the incursions of internal enemies and the invasions of foreign foes. Selfish indeed must be the makers of law—arbitrary indeed must be the law itself—cruel indeed must be the decree under it—and tyrannical indeed must be the executive who administers it—that will say that these men and their descendants shall have neither voice nor opportunity in the great work of the internal improvements of the country which they love so well, and by whose lives they defend so bravely.

No, my friends; such cannot be the intent nor the spirit of the law. It cannot mean to disfranchise the great body of our needy and worthy citizens for the benefit of a favored and unneedy few.

No; it is broad enough, and liberal enough, and just enough to reach the cases and meet the wants of hundreds, and I may say thousands, of your industrious but suffering fellow-citizens, with families and dependencies upon their hands, who are willing to work, but can get nothing to do, and for whom I feel and fear that, if all this labor is suffered to take the other course, it will drift into the same old channels, and follow the same old ruts, and run by or beyond those whom it ought, in all conscience and justice, to benefit.

No government can long prosper or endure which makes a practice of putting up the public labor of its country by public auction to the lowest bidder.

Neither this nor any other city can afford to make a profit off of the labor of its citizens, which it requires on its public works, nor to put in the power of others to do so.

It will never in the end, nor at any other time, pay this or any other city to engage in the business of constructing its public buildings, carrying on its public works, or making its public improvements at the expense of the labor of its people, nor to suffer others to do so.

Neither this nor any other city can hope to build itself up, and become great, upon the margins to be realized from the toil of its citizens, either by its own agency or through the agency of others. No city can ever hope to make a prosperous and happy community by robbing its people of their earnings, and stealing from them their living, either directly or indirectly, under the disguise of frugality or the pretense of economy.

I lay it down as the duty of all government, and of every city, to so employ and reward the labor of its citizens as to leave them a living profit, and afford them a saving margin; and I declare that this duty ought to address itself to, and

impress itself upon, the good sense and sound judgment of each and every citizen, be he rich or poor, in power or out of power.

This proposition is the true principle—this proposition is the correct interpretation—this proposition is the right practice—this course will set the proper example—it will establish the only just rule—and will open up the road leading to better times, and better places to the industrial classes in our midst, in both public and private enterprises.

This action will bear courage to many a drooping heart. It will carry bread to many a starving woman and child. It will restore the family to many a broken and scattered home.

It will inflict no injury upon the city—it will do no wrong to any one—but will give a clear conscience to this Commission, and do untold good to this people.